

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE CHANG, *et al.*,

No. C-07-4005 EMC

Plaintiffs,

v.

ROCKRIDGE MANOR CONDOMINIUM, *et al.*,

Defendants.

**ORDER DENYING PLAINTIFFS'
MOTIONS FOR DEFAULT
JUDGMENT; AND FINDING MOOT
DEFENDANTS' MOTIONS TO SET
ASIDE DEFAULT/DEFAULT
JUDGMENT**

(Docket Nos. 5-8, 10-16, 18, 53)

Plaintiffs have filed motions for default judgment against the following Defendants: (1) Rockridge Manor Homeowners Association; (2) Rockridge Manor Board of Directors; (3) Charles Blakeney; (4) Eva Ammann; (5) the University of California, Berkeley; (6) Robert Birgeneau; (7) Alan Kolling; (8) Victoria Harrison; (9) Adan Tejada; (10) Tom Klatt; and (11) Constance Celaya. *See* Docket Nos. 5-8, 10-16. These same Defendants filed motions for relief from default which also constituted oppositions to the motions for default judgment. *See* Docket Nos. 18, 53.

Having reviewed the parties' briefs and accompanying submissions, and having considered the oral argument of Ms. Chang and counsel at the case management conference of November 14, 2007, the Court hereby **DENIES** all of Plaintiffs' motions for default judgment.

First, Plaintiffs asked for default judgment even though no entry of default had been made in the case. *See Bates v. Osborn*, No. CIV S-06-1035 WBS EFB PS, 2007 U.S. Dist. LEXIS 6150, at *14 (E.D. Cal. Jan. 29, 2007) ("[P]ursuant to Rule 55(a) of the Federal Rules of Civil Procedure, plaintiff must apply for entry of default before default judgment can be entered."). Second, even if

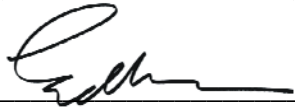
1 default had been entered, default judgment would not be appropriate because some of the defendants
2 may not have been served properly. More importantly Plaintiffs have failed to establish that default
3 judgment is warranted against any of the above Defendants based on the factors enumerated by the
4 Ninth Circuit in *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986), particularly the factor that there is a
5 strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *See*
6 *id.* at 1471-72. All of the subject defendants appear ready to defend their interests herein.

7 Accordingly, Plaintiffs' motion for default judgment is denied. In light of that denial, the
8 motions for relief from default/default judgment are moot.

9 This order disposes of Docket Nos. 5-8, 10-16, 18, and 53.

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11 IT IS SO ORDERED.

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13 Dated: November 28, 2007

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16 EDWARD M. CHEN
17 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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No. C-07-4005 EMC

Plaintiffs,

v.

CERTIFICATE OF SERVICE

ROCKRIDGE MANOR CONDOMINIUM, *et al.*,

Defendants.

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

Christine Chang
341 Tideway Drive #214
Alameda, CA 94501

*ALL OTHER COUNSEL SERVED VIA
ELECTRONIC FILING*

Dated: November 28, 2007

RICHARD W. WIEKING, CLERK

By: /s/
Leni Doyle
Deputy Clerk